SYNOPSIS

FUGITIVE ECONOMIC OFFENDERS AND REPATRIATION LAWS: A COMPARATIVE STUDY

SYNOPSIS SUBMISSION IN PARTIAL FULFILLMENT OF THE DEGREE OF

DOCTOR OF PHILOSOPHY

IN

LAW

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1. **Title**: FUGITIVE ECONOMIC OFFENDERS AND REPARTIATION LAWS: A COMPARATIVE STUDY

2. Introduction:

The country in recent past had faced with a peculiar problem of fugitive economic offenders. The rise in the said new class of offence had forced the current government to frame and deal with the said offence strictly and in this background the legislature framed the Fugitive Economic Offenders Act, 2018. In India, the trend to flee from the country in situation when the individual is unable to pay their debts to the government or the respective banks through which they took the loan or after he commits the crime had became an escape route for such individuals. The situation to flee the country without paying the dues and clearing their respective liability is extremely detrimental to the economy of the country. The loss cause to the banks, the government and the exchequers has a long lasting adverse effect on the country's economic stability.

The country had on previous occasions too faced with this crisis though the cases were limited and due to which the government was non-responsive to these situations and never took any legislative measures to punish such

offenders. For many individuals, big industrialists it had became an escape route from paying their liabilities and further flee from the country by causing loss to the economy of the country.

The recent act by the legislature to deal with fugitive economic offenders covers a wide ambit of offence to combat the offence stringently. The primary aim of the act is to provide for measures to deter fugitive economic offenders to flee from India without paying their debts and if any offence is committed by them than they must face the prosecution for the said offence in India. The Act is comprehensively framed and provides ample power to the executive to take harsh actions against the offenders and in furtherance of that confiscate or attach the properties of the said offender located both within India and also properties located outside India.

Under the abovementioned act as per section 2(f) a fugitive economic offender is any individual against whom a warrant for arrest in relation to a scheduled offence has been issued by any court in India and who has either left India to avoid criminal prosecution, or who, being abroad, refuses to return to India to face criminal prosecution. The schedule offence in the act covers a wide range of offence namely Indian Penal Code, 1860; Negotiable Instruments Act, 1881; the Reserve Bank of India Act, 1934; the Central Excise Act, 1944; the Customs Act, 1962; the Prohibition of Benami Property Transactions Act,

1988; the Prevention of Money Laundering Act, 2002 amongst others under which if a warrant is issued against the offender the said act shall come into force.

After the inception of the said act, as per the statement given by the government in the parliament, till December 2018 the proceedings under the act has been initiated against the 7 fugitive economic offenders who have been involved in economic offences involving 27,969 crores and further as of now many other offenders too have been booked in the said act.

The study shall focus on the past developments that forced the legislature to frame policy to strictly deal with such offences. The specific cases of economic offenders namely Vijay Mallya who is the offender to be booked under the said act, Nirav Modi, Lalit Modi, Mehul Choski amongst others will be analyised comprehensively.

The study will also focus on the loopholes of the said act. The act provides for confiscation/attachment of properties of offenders which are located outside India also. Now confiscation of property within the country can be done by the executive easily though properties situated outside the country are not under the control of the Indian government, therefore they have to request and rely on the foreign governments to seize the properties of the offenders which will

consume time and it will be completely discretion of the foreign governments to act upon the request of Indian government or not. In addition to this section 2(m) of the said act provides definition of scheduled offence which states that "Scheduled Offence" means an offence specified in the Schedule, if the total value involved in such offence or offences is one hundred crore rupees or more. The act excludes the offence in which the amount involved is less than 100 crores rupees which again leave the loophole in the act as many offenders would involve in multiple offences involving less than 100 crore rupees yet he will escape from the provisions of this act. As it is a criminal legislature, its operation is prospective in nature which means act will only apply to those offenders against whom arrest warrant have been issued in relation to scheduled offence after the act have come into force.

The act provides unfettered powers to the executive to confiscate the properties of the offenders. The properties includes properties which are purchased from proceeds of crime and also otherwise that too even prior to any action taken under this act and declaring an offender to be a fugitive economic offender.

The Fugitive Economic Offenders Act, 2018 provides that after the said application is filed in the court, the offender in the stipulated time shall appear before the designated court and take the necessary legal course. In case the offender does not appear before the designated court, the only remedy that lies

with the government is to put an extradition request for the offender before the authorities/government where he is residing or where he had fled.

The Extradition in India is governed by the Extradition Act, 1992. Extradition is handling of the offender who resides in a foreign country to the country where he commits the offence. A model extradition treaty was framed by the United Nations in 1990. In the world of globalization and liberalization, the movement of individuals across the globe has become easier and frequent. For the offenders it became regular practice to flee from their domestic countries after committing the crime it became nearly impossible for authorities of domestic countries to trace the offender and bring him back to the country and prosecute him for his offence.

Therefore in this background it became extremely important for the countries to be in harmony with each other and deport the offenders to their domestic country on the request by the authorities of the domestic country. The only problem which lies in the extradition is that it is usually governed by the principle of the dual criminality. The said principle is that the offence which is committed by the offender must be crime in both the countries and in such situation only the foreign country acts upon the request of the domestic country.

Therefore in cases where the fugitive economic offenders do not appear before the designated court, the extradition law and its principle comes into the play and the last resort for the domestic country is to put the extradition request before the foreign authorities.

Lastly the study will focus on the legal provisions that exist in countries such as United States, England, Germany and China amongst other countries in relation to the fugitive economic offenders and extradition policies to deport the fugitive economic offenders.

3. Aims and Objectives

The present study aims to address the following objectives:

a. To analyse the legal framework to combat the rising issue of fugitive economic offenders in India.

b. To analyse the provisions and ambit of the fugitive economic offenders act, 2018.

c. To study the legal provisions of extradition through which the fugitive economic offender can be deported back to India.

d. To make a comparative analysis with the legal provisions which exist in other developed and developing countries across the globe.

4. **Research questions** :

a. Whether the present act is sufficient to deal with the fugitive economic offenders?

b. Whether extradition laws in relation to fugitive economic offenders helps the government to deport the offenders back to India and face the consequences of their illegal act?

c. What are the legal framework in the other developed and developing countries to combat the fugitive economic offenders and the law relating to extradition?

5. Hypotheses of the Study

The Legal framework dealing with the fugitive economic offenders is sufficient to meet the aims and objectives of the legislature and also the law relating to extradition will help the authorities to deport the offender to India.

6. Scope

This research paper deals with the policies and legal framework that deal with fugitive economic offenders in India. Further a detailed study is conducted and an analysis is made wherein the legal policies made by other countries across the globe will be studied comprehensively and the current challenges that countries are facing in relation to these offences.

7. Significance of the study

This research paper looks at how India has tried to deal with rising menace of fugitive economic offenders. The paper further studies the adverse effects of these offences which forced the legislature to frame policy to deal with the said offences and also to extradite the offenders. Finally a global analysis is made wherein the policies drafted by other countries are focused upon and the current challenges of the said offences are also examined.

8. Research Methodology

The research methodology adopted in this research work is an analytical study mainly doctrinal in nature. The researcher has used both primary and secondary sources. The primary resources are the legislative provisions, judgements of Indian Courts, international instruments. Secondary sources are journals, articles, books and web resource.

9. Chapter (Tentative)

Chapter I: Introduction

The first chapter provides the background which resulted in framing of Fugitive Economic Offenders Act, 2018 by the Indian legislature. It covers the recent rise in economic offences by individuals and fleeing from that country.

Chapter II: National legal framework to prosecute fugitive economic offenders

This chapter provides the detailed analysis of the Fugitive Economic offenders act, 2018. A detailed study of the provisions framed in the act is being done.

Chapter III: Loopholes and specific case studies

The said chapter focuses upon the lacunas in the law framed by the government and whether the objects stated in the act can be fulfilled by it and deter the offenders from fleeing the country. Also specific case studies which forced the legislature to deal with such offenders will also be mentioned in this chapter.

Chapter IV: Legal Framework related to the extradition of offenders

The fourth chapter shall provide for the domestic law related to extradition. Further International treaties which govern the process of extradition between the nations around the globe will also be looked upon.

Chapter V: Detailed analysis of policies related to fugitive economic offenders and their extradition in other countries

The said chapter shall undertake a comprehensive study of law relating to fugitive economic offenders and their legal procedure to extradite from the other countries. Also a comparative analysis of Indian law with laws of other developed nations shall be written in this chapter.

Chapter VI: Conclusion

In this chapter certain concluding remarks on the study will be given in order to arrive at the answers to the research questions raised.

10. Literature Review

Books

a. Sadoff David, "Bringing International Fugitives to Justice: Extradition and its Alternatives", Cambridge University Press, 2017

   This book explores the utility and legality of means available for recovering fugitives abroad, addressing the subject from a global perspective across all crimes. Bringing International Fugitives to Justice provides an in-depth and very nuanced discussion of the policies and practical issues concerning extradition and the alternatives. Thoroughly examining the nature and scope of extradition, it covers such critical issues as remedial means to secure extradition and the alternatives to extradition, including unilateral measures. It seeks to provide a new analytical framework for understanding the operational means available to a state wishing to bring a fugitive to justice and is thoughtful, proactive, and practical.

b. Bansal Vijay., " Law of Extradition in India", Lexis Nexis, 2008

   The book deals with the development of the extradition law from the pre-independence era till date. The book focuses on the all the aspects of the law in comparison with the law prevailing in the United Kingdom, the United States of America amongst other nations around the globe. The book

contains an in-depth, selective analysis of treaties entered into by India with other States.

c. Shearer Ivan, " Extradition in International Law", Manchester University Press, 1971

Articles:

a. Griffith Gavan and Harris Claire, "Recent Developments in the Law of Extradition", Melbourne Journal of International Law, Vol.6, 2007.

   Effective extradition procedures are an essential tool of international law enforcement, both in relation to domestic crime and, increasingly, transnational crime. New international legal frameworks are emerging with the objective of enhancing international responses to organized crime, including terrorist crimes, drug trafficking and economic offenders.

b. Bloom Mathew, "A Comparative Analysis of the United States's Response to Extradition Requests from China", Yale Journal of International Law,Vol.33, 2008.

   The abovementioned article focuses on the two developed countries of the world. The article focuses on the specific cases wherein the Chinese government had time again requested United States to extradite the offenders who had committed crime on the soil of China and had flee

from there. The paper focuses upon the extradition treaties and the role of international law in relation to the extradition process that governs between the two nations.